IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY APPLICATION No. 323 of 2004
In
COMPANY PETITION No. 147 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? **-No.**

2 To be referred to the Reporter or not ?**-No.**

3 Whether their Lordships wish to see the fair copy of the judgment ?**-No.**

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?**-No.**

5 Whether it is to be circulated to the civil judge ?**-No.**

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O.L.OF PIRAMAL FINANCIAL SERVICES LTD. - Applicant(s)
Versus
ASHISH PATEL & 4 - Respondent(s)

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Appearance :
MR RM DESAI for Applicant(s) : 1,
NANAVATI & NANAVATI for Respondent(s) : 1,
NOTICE SERVED for Respondent(s) : 2 - 4.
MR DS VASAVADA for Respondent(s) : 5,

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 01/03/2007

ORAL JUDGMENT

1.Rule. Official Liquidator of Piramal Financial

Services Ltd. has taken out this Judge's summons with following prayers:

(A) The respondents and each of them be directed to hand over quite, vacant and peaceful possession of:

(a) Residential Flat, A/15, 5th Floor,

(b) Residential Flat, B/44, 4th Floor, admeasuring 190 sq. yds. Each in “Tirth Bhoomi” Nr.Law Garden, Ellisbridge, Ahmedabad-380 006,

(c) Office No.601 in “Ganesh Plaza”, Nr. Swastik Char Rasta, Ahmedabad,

(d) 13 flats bearing Nos. C-12, C-22, C-42, C-62, C-72, C-82, D-11, D-21, D-41, D-51, D-61, D-81, D-102 each admeasuring 210 Sq. yds., in “Tirth Bhoomi”, Nr. Law Garden, Ellisbridge, Ahmedabad 380 006.

(B) Liquidator of Piramal Financial Services Ltd., applicant herein be permitted and authorized to take possession of:

(a) Residential Flat, A/15, 5th Floor,

(b) Residential Flat, B/44, 4th Floor, admeasuring 190 sq. yds. Each in “Tirth Bhoomi” Nr.Law Garden, Ellisbridge, Ahmedabad-380 006,

(c) Office No.601 in “Ganesh Plaza”, Nr. Swastik Char Rasta, Ahmedabad,

(d) 13 flats bearing Nos.C-12, C-22, C-42, C-62, C-72, C-82, D-11, D-21, D-41, D-51, D-61, D-81, D-102 each admeasuring 210 Sq. yds., in “Tirth Bhoomi”, Nr. Law Garden, Ellisbridge, Ahmedabad 380 006.

(C) If respondent or any of them or any other persons interfere or objects to the taking over of the possession of:

(a) Residential Flat, A/15, 5th Floor,

(b) Residential Flat, B/44, 4th Floor, admeasuring 190 sq. yds. Each in “Tirth Bhoomi” Nr.Law Garden, Ellisbridge, Ahmedabad-380 006,

(c) Office No.601 in “Ganesh Plaza”, Nr. Swastik Char Rasta, Ahmedabad,

(d) 13 flats bearing Nos.C-12, C-22, C-42, C-62, C-72, C-82, D-11, D-21, D-41, D-51, D-61, D-81,

D-102 each admeasuring 210 Sq. yds., in “Tirth Bhoomi”, Nr. Law Garden, Ellisbridge, Ahmedabad 380 006,

by the Liquidator, then in such event Liquidator may be authorized to remove the respondents and each of them and/or any person occupying the said premises with police assistance and take possession of the said properties.

(D) Ad interim relief in terms of prayer (A), (B) and (C) herein above be granted to the applicant.

(E) After taking possession, the Sale Committee appointed by the Hon'ble Court, be directed and authorized to effect sale of the:

(a) Residential Flat, A/15, 5th Floor,

(b) Residential Flat, B/44, 4th Floor, admeasuring 190 sq. yds. Each in “Tirth Bhoomi” Nr.Law Garden, Ellisbridge, Ahmedabad-380 006,

(c) Office No.601 in “Ganesh Plaza”, Nr. Swastik Char Rasta, Ahmedabad,

(d) 13 flats bearing Nos.C-12, C-22, C-42, C-62, C-72, C-82, D-11, D-21, D-41, D-51, D-61, D-81, D-102 each admeasuring 210 Sq. yds., in “Tirth Bhoomi”, Nr. Law Garden, Ellisbridge, Ahmedabad 380 006.

in realization of the dues of the Company in Liquidation from respondents and each of them by enforcement of the securities available to the Company in Liquidation.

2. In support of the said prayer, Mr.M.A.Kuvadia has filed affidavit on 13/9/2004. Matter was heard from time to time and this Court has passed orders on 29/9/2004, 7/10/2004, 1/9/2005, 17/10/2005, 3/5/2006, 8/8/2006, 8/9/2006, 15/9/2006, 13/10/2006, 3/11/2006, 25/1/2007. With consent of parties, matter is taken up for hearing and final disposal today.

3. It may be noted that in the main matter, affidavit of Mr.Ashish Patel was filed along with annexures on 11/10/2003. Thereafter, additional affidavit of Mr.Ashish Patel was filed on 1/12/2003 with

annexures. Thereafter, affidavits of Mr.Ashish Patel were also filed on 25/10/2004 and 26/10/2005. Further affidavits of Mr.Ashish Patel were also filed on 21/4/2006 and 29/4/2006.

4. When the matter was placed for hearing before this Court on 15/9/2006, this Court has passed an order regarding public advertisement of the petition in this behalf. Pursuant to that order, Mr.Ashish Patel has published advertisement regarding flats in question on 4/9/2006 in “Indian Express” and on 5/9/2006 in “Sandesh”. Thereafter, after publishing advertisements, Mr.Ashish Patel has filed affidavit on 22/11/2006 stating that advertisements were published in two newspapers. Thereafter affidavit of Mr.Umesh Tanwar has been filed on 25/1/2007.

5. The aforesaid affidavit shows open land in question. It has further been stated in the affidavit of Mr.Umesh Tanwar that, as this construction of these two blocks in question was not in accordance with Raja Chhithi issued by the

AMC, the AMC called upon the society to demolish the construction and threatened that if the construction was not demolished by the society itself, the AMC will demolish the same at the cost of the society. It appears that the society also cancelled the development agreement entered into with Radhe Estate Developer. The Society thereafter has got the said constitution of Towers "C" and "D" demolished to comply with the requirements of the Notice issued by the AMC. Along with the said affidavit, the photographs are also attached.

6. In view of the same, this Court has passed an order on 25/1/2007 and directed the Official Liquidator to inspect the site and verify the facts stated in the affidavit and report about the same by 1/2/2007. The Liquidator has filed report dated 1/2/2007. From the report, it shows that Mr.R.C.Raval, JTA, Office of the Official Liquidator and Mr.N.Y.Divate, Superintendent Office of the Official Liquidator has visited the site as per the order. In the report, it is

stated that the officers found out A and B wing of “Tirth Bhoomi” Apartments on F.P. No.605 and inquired of the watchman of the said apartment and asked him as to whether facts stated in the affidavit is right and also whereabouts of Wing C and D of said apartment. Watchman intimated the officers that he had been transferred in this apartment since last one month and therefore he could not able to answer. However, on inquiring about the Chairman/Secretary of the “Tirth Bhoomi” apartment, watchman led the officers to Flat No.63 of Wing B of the said apartment where the officers met with wife of Shri Dinesh Oza and she informed that Mr.Oza is not at home and therefore, the officers asked the question about Wing C and D blocks of the flats to her but she did not reply. Therefore, the officers thereafter met one Mr.Dinesh Bhalawat, Secretary of Swapnalok Apartment existing besides “Tirth Bhoomi” Apartment. He fully co-operated and confirmed that Wing C and D of “Tirth Bhoomi” apartment were earlier built up on Final Plot NO.605 which is just opposite the Swapnalok Apartment but since

the approval of AMC was not obtained the same were demolished somewhere during April 2006 to October 2006.

7. In view of the same, effect of the order of status quo which still continued is not necessary as the said flats were have been demolished and for further details as and when necessary, the report has been filed as per the order of this Court.

8. In view of this further development, now the flats for which the dispute arose, are not there. Therefore no security is required to be furnished.

9. However, matter is disposed of without being prejudice to the rights and contentions of the parties. Rule discharged accordingly.

10. Now the question of status quo will not arise in view of the directions of the order of the Ahmedabad Municipal Corporation.

(K.M.MEHTA, J.)

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